

Constitutional limits of personal freedom

Abstract

The Master's thesis deals with the extensive theme of restriction or deprivation of the personal freedom. The aim of this thesis is not to analyse the reasons for deprivation of personal freedom in detail, but to look at personal freedom as a whole. In the Charter of Fundamental Rights and Freedoms (the Charter), personal freedom is the highest-ranked right to be most often interfered with by the state. Any restriction of personal freedom must meet a number of conditions resulting from legislation, international treaties and the supreme courts' decisions. The main goal of this thesis is to evaluate the frequency and intensity of the deprivation of personal freedom in the Czech Republic. In this thesis I pose the question whether all these limits of permissible deprivation of personal freedom are respected in practice or not. In this thesis I do not deal with the term of imprisonment but I focus on the reasons of deprivation of personal freedom expressly enumerated in the Charter.

The first chapter deals with a brief definition of the concept of personal freedom, its incorporation in our legal order and its implementation in international treaties. In the following section, I present the conditions of permissible deprivation of personal freedom resulting from the Charter, the European Convention on Human Rights and the case law of the Constitutional Court of the Czech Republic and the European Court of Human Rights. Because of this I can define the conditions and limits of the permissible deprivation of personal freedom.

A significant part of the thesis is devoted to detention, arrest, custody and the detention in a medical institution without consent. For each of these reasons, I present current issues and frequently discussed questions and cases. Specifically - the proposed institute „the security of witness“, the arrest warrant and the MUDr. David Rath case. Subsequently, through these problematic aspects, I try to answer the question regarding to the compliance all the respect to these conditions in practice and in which direction the practice is resorted. I also base my conclusions on relevant statistics of the number of detainees.

In my thesis I conclude that the restriction of personal freedom is generally moving in the right direction. People are deprived of personal freedom less often. However, the attention should be paid to arrest. Over the past few years, the number of arrests has increased, and the courts often give a warrant without the conditions being met. The removal of these individual faults is always problematic and it depends mainly on the judge's personal conviction.

The right time for change could be the new Criminal Procedure Act, which would include further and more precise conditions for the permissible deprivation of personal freedom

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